IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR.JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

MFA.No. 297 of 2000(B)

OP.581/1997 of FAMILY COURT, THRISSUR
.....

APPELLANT: PETITIONER

SINDU, AGED 21 YEARS, D/O. ARIKKATT THANKAPPAN, INCHAKKUNDU DESOM, MATTATHOOR VILLAGE MUKUNDAPURAM TALUK.

BY ADV. SRI.SHEEJO CHACKO

RESPONDENT/ RESPONDENT

JAYAN, AGED 29 YEARS, S/O.MELETHUPARAMBIL ACHUTHAN, KDESWARAM DESOM, MANAVALASSERY VILLAGE, MUKUNDAPURAM TALUK.

BY

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

M.F.A.No.297 of 2000-B

Dated: November 14, 2007

JUDGMENT

Harun-Ul-Rashid, J.

The appellant is the petitioner in O.P.No.581/1997 on the file of the Family Court, Thrissur.

2. The petition was filed for recovery of value of gold ornaments and money from the respondent who is the husband of the petitioner. The marriage between the parties was solemnized on 10.9.1995. The parties lived together at the respondent's house and out of the wedlock a son was born to them. It is alleged in the petition that the respondent is a drunkard and having illicit connection with other women. The petitioner also alleged that the respondent was behaving very cruelly to her. The petitioner has a further case that at the time of marriage, 17 sovereigns of gold ornaments and Rs.10,000/- was given to her. All the gold ornaments and the money were appropriated by the respondent against the will of the petitioner and that he deserted her on 14.2.1996. On the basis of the averments in the petition it is prayed that a decree may be passed for recovery of Rs.61,200/- as the value of 17 sovereigns of gold and Rs.10,000/-.

3. The respondent denied the allegations in the petition and also categorically denied the allegation that he appropriated the 17 sovereigns of gold ornaments and Rs.10,000/- as alleged. He also denied the allegation that he was cruel to his wife and that she left the respondent's house on her own accord.

In the circumstances it is pleaded by him that the petitioner is not entitled to any of the reliefs prayed for.

4. The petitioner, in support of her case, examined herself as PW.1 and

produced Exts.A1 and A2. On the side of the respondent, he was examined as RW.1. The court below held that the petitioner is not entitled to recover any amount from the respondent as the value of the gold ornaments or money and therefore the original petition was dismissed.

5. Ext.A1 marriage certificate would go to show that at the time of marriage the petitioner had been given 15½ sovereigns of gold ornaments. PW.1 also tendered evidence stating that 15½ sovereigns of gold ornaments were given to her by her parents at the time of the marriage and 1½ sovereigns of gold ornaments were received by her as gift. The trial court found fault with her for not stating the details viz. item wise list of the gold ornaments in the pleadings. Exts.A1 and A2 photographs would show that she was wearing gold ornaments at the time of marriage. She gave oral evidence to the effect that she was in possession of 17 sovereigns of gold ornaments. The court below also found fault with the petitioner for not stating in the petition or as PW.1 as to when exactly the ornaments were appropriated by the respondent. It is a fact that the parties lived together for a period of about six months. The court below also noticed the fact that there were chances of the respondent having appropriated the gold ornaments of the petitioner. Having gone through the oral evidence of the petitioner read with Exts.A1 and A2, we are of the view that the evidence tendered by the petitioner is sufficient to conclude that the respondent has appropriated the gold ornaments possessed by the petitioner at the time of marriage and thereafter. With regard to the further case that Rs.10,000/- was given to the respondent, there is no reason to disbelieve PW.1. It is quite natural that there is every chance of parting with the money also at the time of the

marriage. The Honourable Supreme Court in *Pratibha Rani v. Suraj Kumar - AIR 1985 SC 628* held that if the property of a married woman is placed in the custody of her husband or in-laws, they will be deemed to be trustees and bound to return the same if and when demanded by her. The husband being only a custodian of the wife's property, cannot be said to be in joint possession thereof and thus acquire a joint interest in the property. It is noted that the material averments of PW.1 are not challenged in cross-examination. The reason stated by the court below for not accepting her case is not appealing to us. After going through the oral and documentary evidence adduced by the petitioner, we are of the view that the petitioner has succeeded in establishing her case.

In the result, the judgment and decree under appeal are set aside. A decree is passed allowing the petitioner to recover Rs.61,200/- as value of 17 sovereigns of gold ornaments and Rs.10,000/- from the respondent and his assets. There will be no order as to costs.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

MFA 297 OF 2000-B

JUDGMENT

14.11.2007